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In Re Application of: David D. McGovern
Serial No. 09/476,711
Filed: Dec. 30, 1999
For: A Declarative Method

Examiner: Andre D. Boyce
Group Art Unit: 3623
Atty. Docket No: McG-003
Date: Jan. 23, 2008

THE COMMISSIONER OF PATENTS
P.O. Box 1450
Arlington, VA 22313

SIR: Transmitted herewith is a Petition for Revival of an Unintentionally Abandoned Application, including specifically:

X Response to the Notice of Non-Compliant Amendment, sent by the USPTO on April __, 2007 but not received until a faxed copy was sent by the Examiner after telephone contact on 12/07/07; and

X Corrections to the Amendment (typographical alteration of claims listing) to render it Compliant as believed required by the Notice.

X Small entity status for this application under 37 CFR §1.9 and 1.27 has been established by a verified statement previously submitted.

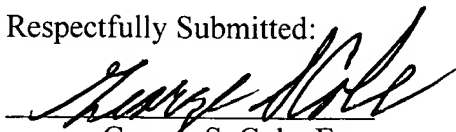
X Extension of time as necessary is requested and a payment for the required fee is enclosed.

X The Commissioner is hereby authorized to charge payment of any necessary fees, or credit any overpayment, to Deposit Account 50-0705 associated with this communication for any related purpose, including: (A DUPLICATE COPY OF THIS SHEET IS ENCLOSED)

X Any additional filing fees required for presentation of extra claims

X Any extension or petition fees.

Respectfully Submitted:


George S. Cole, Esq.
PTO #40,563

01/25/2008 SSITHIB1 00000044 09476711

01 FC:2453

770.00 DP

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In Re Application Of: David O. McGoveran		Examiner:	Andre D. Boyce
Serial No. 09/476,711		Group Art Unit:	3623
Filed: Dec. 30, 1999		Atty. Docket No:	McG-003
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REMARKS

A response to the previous Final Office Action was mailed on August 18, 2006. A Response After Final was sent but not accepted or entered by the Examiner. Then a timely Request for Continued Examination was sent in February 2007. Claims 112-190 and 192 were pending in the application; and the principal independent claim had been amended to meet the objections cited in the Final Office Action, while other claims had had conforming, chiefly typographic emendations made, placing the Claims in condition for allowance.

In December, 2007 the Examiner telephoned to state that the application had apparently been abandoned. He stated that a "Notice of Non-Compliant Amendment" had been mailed at some date in April, 2007. This Notice was never received by applicant's attorney, whose address had not changed. Subsequent inquiry of those in the office, and of the records, failed to find any record of this Notice's arrival. Since then another failure of regular mail delivery has been documented (non-delivery of an unanticipated refund check, followed by an inquiry as to the non-deposit from the drafter).

Any abandonment was entirely unintentional and arose solely through a non-delivery of the U.S. mail, without the knowledge of, and certainly against the desire or interests of, applicant.

The Examiner subsequently sent out a Notice of Abandonment. Applicant's attorney had requested that a copy of the 'Notice of Non-Compliant Amendment' be included; but No 'Notice of Abandonment' was received, though it is believed an informal delivery by fax was attempted but not completed (line interference was found cited on the fax machine's report).

Applicant's attorney attempted to access the non-available 'Notice of Non-Compliant Amendment' electronically, as strongly suggested by the Examiner. On multiple occasions, particularly in the lull immediately after Christmas (Dec. 26-28th, 2007), the USPTO website was either non-responsive, overloaded, or down; all applicant's attorney could determine was that the USPTO's electronic access was not functioning. When applicant's attorney finally was able to access the USPTO's website and PAIR system in early January, 2007, only search of records for applications filed from 2001 forwards was enabled – which meant that this application was not accessible, as it had been filed prior to that date. Repeated efforts to access the file electronically were never successful. To date applicant's attorney has never received or been able to retrieve from the USPTO the actual 'Notice of Non-Compliant Amendment', despite his efforts to do so.

Apparent Grounds for Rejections for Non-Compliance

The Examiner had stated that the grounds for rejection for non-compliance were a typographical flaw in the claims listing – the lack of underlining for a limited section of new text in a claim, one marked as 'Currently Amended'.

Applicant's attorney has made repeated textual comparisons both electronically and by hand between the text submitted before the RCE, and that submitted with the RCE and thus the subject of the 'Notice of Non-Compliant Amendment'. Electronic comparisons showed that only one line, of the first sub-paragraph of the first amended claim, had had underlining omitted. (Two other changes found electronically were a change in paragraph formatting and the omission of three ending blank lines; neither readily visible in the printed version). The visual comparisons showed that four lines, the first three sub-paragraphs of the first amended claim, had had the underlining omitted.

Submission of Corrected Claims Listing

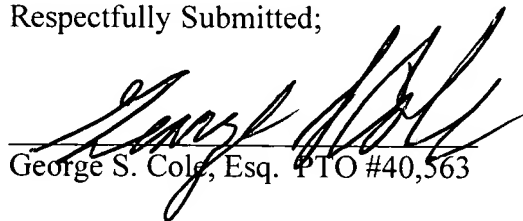
As part of a Petition for Revival, a Petitioner must provide a full and compliant Response to the previous objection. This petitioner cannot attach a copy of the previous objection, as none has been received. Without the actual 'Notice of Non-Compliant Amendment', applicant's attorney has had to review the previous texts to deduce the non-available objection, and then respond accordingly, bearing the entire burden of such effort.

A corrected 'Claims Listing' with the typographical emendations is attached and part of this petition.

Conclusion

Applicant humbly requests that this application be revived, that this amended claim be accepted, and as this application is now submitted in full condition for allowance, that it be so allowed. Applicant requests a telephonic interview with the Examiner if any issues remain respecting this application, to ensure against a further postal failure.

Respectfully Submitted;

A handwritten signature in black ink, appearing to read 'George S. Cole', is written over a horizontal line.

George S. Cole, Esq. PTO #40,563



EXPRESS MAIL CERTIFICATE

Express Mail" mailing label No: EQ 341986895 US

Date of Deposit: Jan. 23rd, 2008

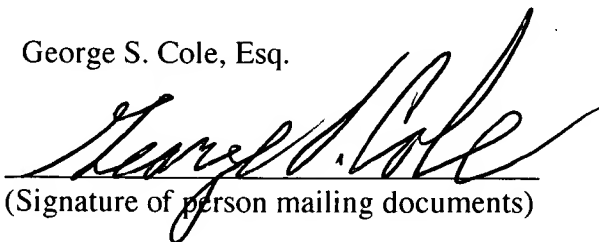
I hereby certify that the following documents:

- petition for Revival of Unintentionally Abandoned Application;
 - payment for petition;
 - payment for extension of time (if deemed necessary);
 - corrected Claims Listing responsive to objections made known to and detectable by petitioner;
- and,
- a copy of this Express Mail Certificate;
-

are being deposited in a single envelope with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and such envelope is addressed to:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

George S. Cole, Esq.


(Signature of person mailing documents)